

Petitioner's Representative: Michael Metz, Metz Legal Services, PC
Respondent's Representative: Frank J. Agostino

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GCH, LLC)
) Pet. No. 71-018-09-2-8-00004
Petitioner,)
) Parcel No. 71-08-12-311-001.000-026
v.)
)
ST. JOSEPH COUNTY ASSESSOR) County: St. Joseph
)
Respondent.) Township: Portage
)
) Assessment Year: 2008, 2009
)

FINAL DETERMINATION FOLLOWING RE-HEARING

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. This case has a convoluted history in which the subject property stopped receiving an exemption that it had previously received but for which its owners, including GCH, LLC, had never applied. To the extent GCH could appeal directly to the Board using a Form 132 petition—and it is not clear whether the relevant statutes permit such an appeal—GCH would have needed to file that petition within 45 days of notice being issued that the exemption had been removed. Because GCH did not file a Form 132 petition until several months after having received a tax bill purporting to tax the subject property, GCH did not properly invoke the Board’s authority to review the merits of its claim.

Background and Procedural History Before the Board

2. On November 9, 2010, the Board received a Form 132 petition from GCH. The petition had several attachments, including a second Form 132 petition. GCH, however, did not include a copy of an exemption application or a determination by the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”). On November 23, 2010, the Board issued a Notice of Defect in Completion of Assessment Appeal Form, notifying GCH that its Form 132 petition was inadequate for the following reasons:
 - GCH did not attach a copy of a Form 120 determination by the PTABOA
 - GCH did not attach a file-stamped copy of its Form 136 exemption application, and
 - GCH’s petition was missing page 3.

The Board notified GCH that it could cure those defects by correcting the Form 132 petition, supplying the missing attachments, and returning those documents to the Board by December 23, 2010.

3. GCH did not respond to the Board’s defect notice. Thus, on January 11, 2011, the Board issued its determination denying GCH’s Form 132 petition. The Board based its decision on GCH’s failure to comply with Ind. Code § 6-1.1-15-4(c), which gives a petitioner 30 days from the date of a defect notice to cure identified defects and file a corrected petition that substantially complies with the Board’s instructions for completing the petition.
4. On February 8, 2011, GCH filed a request for rehearing in which its counsel attempted to explain the events and circumstances that gave rise to the defects in GCH’s Form 132 petition. On February 10, 2011, the Board granted GCH’s request, although it did not issue notice to the parties. That notice was provided when David Pardo, the Board’s designated administrative law judge (“ALJ”), issued an order setting a preliminary hearing to determine whether the defects in the Form 132 petition or other procedural defects preclude the Board from addressing the merits of GCH’s claims.

5. The ALJ held the preliminary hearing on June 21, 2011. Rosemary Mandrici, the St. Joseph County Assessor, and Laura Cleek, GCH's office manager, were sworn in and testified at the hearing.
6. GCH offered the following exhibits:
 - Petitioner's Exhibit 1: Form 133 petition (pages 1, 2, and 3 of 4)
7. The St. Joseph County Assessor offered the following exhibits:
 - Respondent's Exhibit 1: Form 132 petition signed March 17, 2010
 - Respondent's Exhibit 2: Form 132 petition with April 22, 2010 "Received" stamp from Board, tax statement, and tax bill
 - Respondent's Exhibit 3: Form 133 petition with two copies of page 2 of 4 (one unsigned and the other signed by Clark Harrison and bearing a fax transmission information); unsigned Form 133 petition
 - Respondent's Exhibit 4: Form 120 Notice of Action on Assessment Application dated 12/15/2010
 - Respondent's Exhibit 5: Form 136 application with tax bill and GCH, LLC Balance Sheet
8. All pleadings and documents filed in this appeal as well as all orders issued by the Board or the ALJ are part of the record, as is the digital recording of the Board's hearing.
9. Neither the Board nor the ALJ inspected GCH's property.

Findings of Fact

10. The subject property previously was owned by a partnership in which Clark Harrison was a partner. *Cleek testimony*. In August 2008, the property was apparently transferred to Clark Harrison, who then transferred it to GCH. *Id.* At all times relevant to this appeal, the property was leased to the United States Social Security Administration. *Id.* The property had received an exemption for several years. *Id.*
11. At some point that changed. Laura Cleek, GCH's office manager, did not know about that change until November 2009 when GCH received a tax bill for the 2008 assessment

year. *Cleek testimony*. Ms. Cleek telephoned the Assessor's office several times, although she did not say what date she began making those calls. *Id.* According to Ms. Cleek, on March 17, 2010, GCH filed a Form 132 petition with the Assessor. *Id.*; *Resp't Ex. 1*.

12. GCH did not offer copies of that petition at the hearing. The Assessor, however, offered copies of two different Form 132 petitions. The first was signed on March 17, 2010, and has no file stamp on it. *Resp't Ex. 1*. It refers to the March 1, 2008 assessment year and requests "reinstatement of the exemption and waiving of the tax billing for 2008 payable 2009." *Id.* The second petition was signed on April 19, 2010, and has a "Received" stamp from the Board of April 22, 2010. *Resp't Ex. 2*. It also has a file stamp from the St. Joseph County Assessor and PTABOA, but the date on that stamp is illegible. *Id.* The second petition refers to the March 1, 2009 assessment year and requests "reinstatement of the exemption and waiving of the tax billing for 2009 payable 2010." *Id.*
13. Ms. Cleek was also told that she needed to file an exemption application because GCH had not filed one. *Cleek testimony*. GCH therefore filed a Form 136 Application for Property Tax Exemption on March 17, 2010. *See id.*; *Resp't Ex. 5*. Ms. Cleek continued to talk to the Assessor's office and was told that they had a stack of petitions and that she would be notified in a month and a half. *Cleek testimony*. Ms. Cleek was not notified about any action being taken, and therefore followed up by calling the Assessor's office many times. On June 21, she finally spoke to someone from the office named Robin. Robin told Ms. Cleek that a Form 133 Petition for Correction of an Error would be filed. *Id.* According to Robin, all that would need to be changed was the property's tax code and that would take care of 2008 and 2009. *See id.* Robin told Ms. Cleek to wait two weeks and call Patty Henry in the auditor's office. *Id.* Ms. Cleek waited three weeks and called Ms. Henry, who did not have any idea what Ms. Cleek was talking about and told Ms. Cleek that she could not change the tax code without any paperwork. *Id.*

14. Ms. Cleek continued to call Robin, who said that she would get back to Ms. Cleek but never did. *Id.* Finally, in July, Robin faxed Ms. Cleek a Form 133 petition and said that it would be sent to the auditor's office. *Id.*; *see also, Pet'r Ex. 1.* Robin again told Ms. Cleek that the problem would be corrected for the two years and that it would carry forward. *Id.* No decision has been issued on that Form 133 petition. *See Cleek testimony.*
15. In November 2010, Ms. Cleek mailed a Form 132 petition to the Board. *Cleek testimony.* According to Ms. Cleek, it was the Form 132 petition that she had filed with Assessor on March 17, 2010. *Id.* The Form 132 petition that was received by the Board on November 9, 2010, is very similar to the first Form 132 petition that the Assessor offered into evidence. But on the petition received by the Board, the box for indicating the assessment date at issue is blank, while on the petition submitted by the Assessor March 1, 2008 is filled in. Attached to the stamped Form 132 petition was a series of documents, including a second Form 132 petition that appears to be the same as the petition offered by the Assessor as Respondent's Exhibit 2.

Conclusions of Law and Analysis

A. Motion to Strike

16. After Ms. Mandrici finished testifying, GCH moved to strike all her testimony on grounds that she lacked personal knowledge. According to GCH, because Ms. Mandrici did not become the St. Joseph County Assessor until January 1, 2011, and did not deal with exemptions during the time she worked in the Assessor's office before becoming the Assessor, she lacked personal knowledge about any of GCH's relevant filings or any action taken on those filings. While the ALJ expressed doubt as to the propriety of GCH's motion, he took that motion under advisement.
17. The Board overrules GCH's motion to strike. Although GCH initially sought to include the Assessor's exhibits in its motion, GCH ultimately acknowledged that the exhibits had

already been admitted without objection and directed the motion solely to Ms. Mandrici's testimony. But Ms. Mandrici testified to little beyond sponsoring the exhibits as a records custodian. While she testified as to the sequence that the various documents were filed with the Assessor's office, the documents all have signature lines or date stamps showing that information. And Ms. Mandrici's testimony added little or nothing to what GCH's own witness, Ms. Cleek, had already testified. For example, GCH focused on Ms. Mandrici's testimony that no action had been taken on GCH's Form 133 petition. But Ms. Cleek, had already testified that GCH had not received a determination on its Form 133 petition.

B. The Board's Authority to Address GCH's Form 132 Petitions

18. At the outset, the Board notes that GCH's filings have caused much confusion. For example, when GCH filed a Form 132 petition with the Board in November 2011, it included a second Form 132 petition among other attachments without calling the Board's attention to it. Thus, while it appears that GCH has attempted to contest both the 2008 and 2009 assessment years, the Board assigned only one cause number to the case and listed only one assessment year. Because the parties addressed both years in their presentations, the Board does so as well.

19. Several other things also have contributed to the procedural morass that is now before the Board: (1) the Assessor, or some other local official took away an exemption that the subject property had been receiving without notifying GCH of that change other than through a tax bill; (2) the property tax appeal statutes do not expressly contemplate that situation and therefore do not spell out how a taxpayer should challenge such an action; (3) GCH initially filed different Form 132 petitions in different places, and in one case, did not fill-in the box calling for the taxpayer to identify the assessment year at issue; and (4) when the Board notified GCH of deficiencies in its Form 132 petition, GCH ignored that notice rather than attempting to respond to it.

20. To sort it all out, the Board turns first to the general statutory scheme for claiming exemptions from property taxes. The Indiana General Assembly has provided myriad exemptions. Many can be found within Ind. Code § 6-1.1-10, including Ind. Code § 6-1.1-10-1—the only statute listed on GCH’s Form 132 petitions. According to that statute:

The property of the United States and its agencies and instrumentalities is exempt from property taxation to the extent that this state is prohibited by law from taxing it. However, any interest in tangible property of the United States shall be assessed and taxed to the extent this state is not prohibited from taxing it by the Constitution of the United States.

I.C. § 6-1.1-10-1(a). Other exemptions are sprinkled throughout the code, including Ind. Code § 36-1-10-18—the other statute that GCH referenced at the hearing. That statute provides:

Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision or agency under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation.

I.C. § 36-1-10-18.

21. For the most part, however, exemptions are not self-enacting. Taxpayers generally must file an exemption application on or before May 15 of each year. I.C. § 6-1.1-11-3(a). There are various exceptions to that rule. Thus, for example, many not-for-profit corporations and other entities seeking exemptions under Ind. Code §§ 6-1.1-10-16 , 6-1.1-10-21, or 6-1.1-10-24 need only file applications in every even-numbered year, or upon having once been granted an exemption, need not continue to file applications provided they continue to use the property for exempt purposes. *See* I.C. §§ 6-1.1-11-3.5, 6-1.1-11-4(d). Similarly, certain governmental property owners need not file an application for real estate that they own, occupy, and use:

The exemption application referred to in section 3 of this chapter is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). However, this subsection applies only when the property is used, and in the case of real property occupied, by the owner.

I.C. § 6-1.1-11-4(a) (emphasis added).

22. The Assessor argues that GCH's Form 132 petitions are procedurally defective because (1) GCH was not entitled to an exemption under either Ind. Code § 6-1.1-10-1 or Ind. Code § 36-1-10-18; (2) GCH failed to timely file a Form 136 application for the 2008 or 2009 assessment years; and (3) the PTABOA did not issue a Form 120 determination for either assessment year.
23. The first question—whether GCH was substantively entitled to an exemption—is not before the Board at this point. The purpose of the preliminary hearing was to decide whether procedural defects prevent the Board from hearing the merits of GCH's appeal.
24. The Assessor's second point—that GCH did not timely file a Form 136 application for 2008 or 2009—is more on point. Even if GCH was substantively entitled to an exemption under either Ind. Code § 36-1-10-18 or Ind. Code § 6-1.1-10-1, GCH was not excused from having to file an application on or before May 15 of the year for which it sought the exemption. Indiana Code § 6-1.1-11-4(a) only makes an exception from the general filing requirements for property that is owned, occupied, and used by specified governmental entities. And GCH, not the Social Security Administration, owned the subject property. GCH does not point to, nor does the Board find, any other statutory provision excusing GCH from having to apply for an exemption.
25. GCH, however, seeks to avoid its failure to timely file an exemption application by pointing to the fact that it had previously been granted an exemption without filing an application. That fact may not help GCH much. By statute, “[a]n exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption.” I.C. § 6-1.1-11-1. And a property owner waives an exemption by failing to comply with the statutory procedures for obtaining it. *Id.* The fact that GCH mistakenly relied on the errors of local government officials in not previously holding GCH to the statutory filing requirements, while unfortunate, likely does not alter the equation. As the Indiana Supreme Court has explained, “When the legislature enacts procedures and timetables which act as a precedent to the exercise of

some right or remedy, those procedures cannot be circumvented by the unauthorized acts and statements of officers, agents or staff of the various departments of our state government.” *Middleton Motors, Inc. v. Indiana Dep’t of State Revenue*, 269 Ind. 282, 285, 380 N.E.2d 79, 81 (1978).

26. In *Middleton Motors*, the Indiana Supreme Court held that the trial court had properly dismissed a complaint for a tax refund where the taxpayer filed the complaint after the three-month filing period set forth in Ind. Code § 6-2-1-19(1972)¹ had expired. 380 N.E.2d at 284. The Indiana Supreme Court rejected the taxpayer’s claim that the State was estopped from asserting that the trial court lacked jurisdiction because the deputy director for the Department of State Revenue had told the taxpayer that it had two years from the payment of a final installment to file an action to reclaim any excessive tax. *Id.* at 283. While not directly on point—*Middleton Motors* involved affirmative misrepresentations by an official whereas GCH claims that it was misled by the official acts of granting it exemptions in prior years—*Middleton Motors* is closely analogous to this case.
27. The Board, however, need not ultimately rule on whether GCH’s failure to file Form 136 applications for 2008 and 2009 is fatal to GCH’s exemption claims. While GCH’s failure to timely apply for an exemption arguably might be a good defense to those claims if the Board reaches the merits, that failure does not prevent the Board from hearing the merits. Instead, the Board’s authority to hear an appeal is circumscribed by the subject matter of the appeal, the identity of the government official from whose action the appeal is taken, and the time within which an appeal petition is filed. Those requirements are laid out in a series of statutes. As a starting point, Indiana Code § 6-1.5-4-1 provides:
- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
 - (1) the assessed valuation of tangible property;
 - (2) property tax deductions;
 - (3) property tax exemptions; or
 - (4) property tax credits;

¹ Ind. Code § 6-2-1-19 was repealed by Acts 1981, P.L.77, SEC.22.

that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law.

(b) Appeals described in this section shall be conducted under IC 6-1.1-15.

I.C. § 6-1.1-4-1.

28. Indiana Code § 6-1.1-15, in turn, provides two different avenues of appeal to the Board from actions of local government officials. First, Indiana Code § 6-1.1-15-3 provides, in relevant part:

(a) A taxpayer may obtain a review by the Indiana board of a county board's action with respect to the following:

(1) The assessment of that taxpayer's tangible property if the county board's action requires the giving of notice to the taxpayer.

(2) The exemption of that taxpayer's tangible property if the taxpayer receives a notice of an exemption determination by the county board under IC 6-1.1-11-7.

(b) The county assessor is the party to the review under this section to defend the determination of the county board. At the time the notice of that determination is given to the taxpayer, the taxpayer shall also be informed in writing of:

(1) the taxpayer's opportunity for review under this section; and

(2) the procedures the taxpayer must follow in order to obtain review under this section.

(d) In order to obtain a review by the Indiana board under this section, the party must, not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the county board:

(1) file a petition for review with the Indiana board; and

(2) mail a copy of the petition to the other party.

I.C. § 6-1.1-15-3. This is the most common avenue for appeal and the Board has promulgated two different forms for prosecuting such an appeal—Form 131 for appeals from assessment determinations, and Form 132, for appeals from exemption determinations.

29. Second, Indiana Code § 6-1.1-15-12 allows a taxpayer to appeal to the Board from the decision of a county PTABOA where the taxpayer alleges certain narrowly defined errors, including that its “taxes, as a matter of law, were illegal,” and that “through an error of omission by any state or county officer, the taxpayer was not given an exemption

permitted by law.” I.C. § 6-1.1-15-12(a)(6) and (a)(8)(C); I.C. § 6-1.1-15-12(d) and (e). The form used for this avenue is a Form 133 Petition for Correction of an Error.

30. Although GCH apparently has pursued both avenues, only its Form 132 petitions are before the Board at this point. Thus, to invoke the Board’s authority, GCH needed to comply with Indiana Code § 6-1.1-15-3. The Assessor argues that GCH has not done so because that statute contemplates a taxpayer appealing from a county PTABOA’s decision and the PTABOA did not issue a Form 120 determination. Of course, that is because GCH did not apply for an exemption. While the Board harbors significant doubt about GCH’s claim that it did not need to apply for the particular exemption(s) it seeks, the statute governing exemption procedures does list various types of exemptions that, once granted, a taxpayer need not reapply for. A taxpayer at least arguably has some avenue to appeal directly to the Board when an assessor or other assessing official unilaterally takes away that exemption even if the county PTABOA does not issue a Form 120 determination.
31. The Board need not decide whether filing a Form 132 petition is such an avenue. Even if one reads Indiana Code § 6-1.1-15-3 broadly enough to permit such an appeal, the taxpayer would still have to file its petition within 45 days of being given notice that its exemption has been removed. GCH, however, did not send either Form 132 petition to the Board until at least April 19, 2011—more than four months after GCH received the 2008 pay 2009 tax bill notifying GCH that it was no longer receiving an exemption. Although GCH sent one Form 132 petition to the Assessor on or about March 17, 2007, that was still more than three months after GCH was given notice.
32. The Board hastens to add that it decides only that it lacks authority to address GCH’s Form 132 petitions for the 2008 and 2009 assessment years. At the time of the hearing, no determination had been made on GCH’s Form 133 petition. It may be that the PTABOA and possibly the Board will have the occasion to address the merits of GCH’s claims—including whether GCH was substantively entitled to an exemption and, if so,

whether GCH waived that exemption by failing to timely apply for it—in the context of the Form 133 petition. That, however, is a question for another day.

SUMMARY OF FINAL DETERMINATION

33. Because GCH, LLC did not file its Form 132 petitions contesting the denial of an exemption for the subject property for the 2008 and 2009 assessment years until more than 45 days after it received notice that the property was not being given an exemption, the Board lacks authority to address those petitions. The Board therefore dismisses GCH’s Form 132 petitions.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>